

## REMARKS

### Examiner's Rejections and Objections

The subject patent application is a continuation of U.S. Patent Application Serial No. 10/136,550 ("the '550 application") which was filed on May 1, 2002.

In the initial and only Office Action received during the prosecution of the '550 application, the Examiner rejected Claims 1, 9-14, 17, 23, 29, 30, 38 and 39 under 35 U.S.C. §102(b) as being anticipated by the McMahan reference ("McMahan"). The Examiner also rejected Claims 30-36 and 39 under 35 U.S.C. §102(e) as being anticipated by the Moreno reference ("Moreno"). Furthermore, Claims 2, 8, 16, 18, 19, 31, 32, 36 and 37 were rejected under 35 U.S.C. §103(a) as being unpatentable over McMahan.

Further in that Office Action, the Examiner additionally rejected Claim 15 under 35 U.S.C. §103(a) as being unpatentable over McMahan in view of the British patent document 2176523 to Power. Claims 24 and 25 were rejected under 35 U.S.C. §103(a) as being unpatentable over McMahan in view of the Cohn et al. reference. Moreover, the Examiner rejected Claims 24, 26 and 27 under 35 U.S.C. §103(a) as being unpatentable over McMahan in view of the Sham reference. Lastly, Claims 37 and 38 were rejected under 35 U.S.C. §103(a) as being unpatentable over Moreno in view of McMahan.

Importantly in that Office Action, however, even though the Examiner objected Claims 3-7 and 20-22 as being dependent upon a rejected base claims, the Examiner however indicated that such claims would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

As will be demonstrated below, it is respectfully submitted that the presently pending claims, and more particularly new independent Claim 40, incorporate certain features which are believed to be allowable over all of the relevant prior art references cited in the earlier prosecution.

#### New Independent Claim 40

More specifically, new independent Claim 40 essentially incorporates the substance of original dependent Claim 3, which was deemed allowable by the Examiner in the earlier prosecution of the '550 application after thorough searching. Although Applicant respectfully submits that new base Claim 40 is thus allowable for containing the essential substance of original dependent Claim 3, Applicant will nonetheless point out the differences between the present invention and the prior art to justify patentability of the subject patent application.

Applicant sets forth below its arguments for new independent Claim 40 in a numerical order in hopes of clarity

and assisting the Examiner in facilitating the prosecution of the subject patent application. In this regard, Applicant hopes to lay out the distinctions between the present invention and the cited prior art references.

1. The Present Invention In New Independent Claim 40

Applicant presents herein new independent Claim 40 which is believed to incorporate features which are novel over each of the cited prior art references. The present invention, as reflected in new base Claim 40, is an apparatus for moisturizing and warming one or more wipes which is fabric in nature such as baby wipes, for example.

Importantly, among others, the apparatus of the present invention includes a housing which is strongly believed to be constructed in a novel and unique fashion. Specifically, the housing utilized in the present warming and moisturizing apparatus is comprised of at least two housing members, that is, a body member and a base member which are sized and configured to engage with each other. More specifically, the base end of the exterior-side housing wall peripherally defining the body member is adapted to engage with the base member.

By engaging the two housing members together in such manner, an inside compartment is formed therebetween such that a liquid container assembly and a heating element can be placed therewithin. In this respect, a portion of the liquid can be

dispensed through one or more of the apertures of the liquid container assembly in order to moisturize the wipes, whereas the heating element may further provide heat so as to warm up the wipes.

It should be emphasized here again that the unique feature of the two housing members, i.e., body and base members, coming or engaging together in such a manner to form the housing and inside housing compartment was viewed to be already allowable in the earlier '505 prosecution. Regardless of that fact, Applicant feels that such recitation of elements, along with other enumerated elements of new independent Claim 40, will be sufficient to patentably distinguish the present invention over the previously cited prior art of relevance.

## 2. The Standard for 35 U.S.C. §102 Rejection

As the Examiner is already aware, anticipation cannot be established unless a single prior art reference discloses each and every element of the claimed invention. Structural Rubber Co. v. Park Rubber Co., 749 F.2d 707, 223 U.S.P.Q. 1264 (Fed. Cir. 1984). Further, for anticipation to apply, all of the claimed elements must be found in exactly the same situation and united in the same way to perform the identical function in a single unit of the prior art. (See, e.g., Studiengesellschaft Kohle m.b.H. v. Dart Industries, 762 F.2d 724, 726, 220 U.S.P.Q. 841, 842 (Fed. Cir. 1984)). Even further, any inherency which

is applied in the context of anticipation "does not embrace probabilities or possibilities." Trintec Industries Inc. v. Top-U.S.A. Corp., 63 U.S.P.Q.2d 1597, 1601 (Fed. Cir. 2002) (holding of no express or inherent anticipation in a scenario where a catalog taught printing methods but not "creating" anything in a computer as the latter was not disclosed therein). As will be demonstrated below, the previously cited prior art of relevance, namely, McMahan and Moreno fail to anticipate the present invention in view of such legal standard.

### 3. McMahan In View of the Present Invention

As understood, McMahan fails to teach or suggest a housing comprising at least two housing members such as a body member and a base member which are sized and configured to engage with each other to form an inside compartment therebetween. More specifically, Applicant respectfully submits that McMahan lacks the specific configuration of a body member which is adapted to engage onto a base member and define an inside compartment of the present invention collectively with its interior-side housing wall and upper housing wall.

In McMahan, an opposite configuration is understood to be portrayed where "the water tray (analogous to the present invention's base member) is arranged so as to nest within the cavity defined by the imposing sidewall of the frame support (analogous to the present invention's body member)." (Column 2,

line 67 - Column 3, line 1). It is McMahan's water tray that is believed to form its version of the inside compartment. (See, Figure 2 of McMahan). It appears that this configuration is opposite to the one depicted in the present invention where the body member is engaged upon the base member (not just nesting the base member therewithin) to collectively define the requisite inside compartment (not just with the base member).

#### 4. Moreno In View of the Present Invention

Likewise, Applicant respectfully submits that Moreno fails to disclose a housing comprising at least two housing members such as a body member and a base member which are sized and configured to engage with each other to form an inside compartment therebetween. Moreno is believed to lack the specific configuration of a body member which is adapted to engage onto a base member and define an inside compartment of the present invention collectively with its interior-side housing wall and upper housing wall. As understood, Moreno merely discloses a unitary housing which forms an interior spacing therewithin. As noted above, such interior spacing is segmented into two compartments through the use of its plate, in which a number of steam towers are accommodated within the bottom-formed compartment. (See, Figures 1 and 5 of Moreno). Applicant respectfully submits that this is truly distinguishable from the configuration of the present invention

requiring the engagement between at least two housing members to define the requisite inside compartment in which various structural components such as liquid container assembly and heating element may be placed therewithin.

In conclusion, it is respectfully submitted that neither McMahan nor Moreno should anticipate the present invention as recited in new independent Claim 40. Each of the invention's objectives and structural features are clearly distinguishable. Thus, Applicant respectfully submits that the new base Claim 40 is allowable. Insofar as new base Claim 40 is viewed to be allowable, its dependent claims are also believed to be allowable as they are further limitations thereof.

#### Request for Allowance

On the basis of the foregoing, Applicant respectfully submits that all the stated grounds of rejections have been overcome, and that Claims 40-57 are in condition for allowance. An early Notice of Allowance is therefore respectfully requested.

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Should the Examiner have any suggestions for expediting allowance of the application, the Examiner is invited to contact Applicant's representative at the telephone number listed below.

Respectfully submitted,

Date:

12/26/03

By:



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